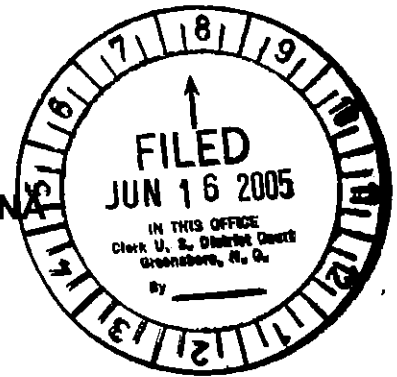


106.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**



ESTATE OF SHELIA WILLIAMS-MOORE,)
RN BSN, WILLIE F. MOORE, RN BSN,)

Plaintiff, pro se,)

v.)

1:03CV899

ALLIANCE ONE RECEIVABLES)
MANAGEMENT, INC., and CEO; BLUE)
CROSS BLUE SHIELD (PARTNERS))
of NORTH CAROLINA and CEO; DUKE)
UNIVERSITY HEALTH SYSTEM, INC.)
and CEO,)

Defendants.)

RECOMMENDATION AND ORDER OF UNITED STATES MAGISTRATE JUDGE

This matter is before the court on a motion for judgment on the pleadings by pro se Plaintiff Willie Moore (docket no. 88). Defendants have responded to Plaintiff's motion, and the matter is ripe for disposition. The parties have not consented to the jurisdiction of a magistrate judge, and the court must therefore address the motion by way of recommendation. For the reasons stated herein, it will be recommended that the court deny Plaintiff's motion for judgment on the pleadings.

Background

A full factual account of this case is recited in a previous order by the court in which the court dismissed most of the claims against Defendants, *see Estate of*

Williams-Moore v. Alliance One Receivables Mgmt., Inc., 335 F. Supp. 2d 636 (M.D.N.C. 2004). To summarize, Plaintiff's wife suffered from cancer and died in 2002 after undergoing treatment for pain management from Defendant Duke University Health System, Inc. ("Duke Health"). Plaintiff's wife had been covered under an insurance policy with Defendant Blue Cross Blue Shield (Partners) of North Carolina ("BCBSNC"). Plaintiff has sued on behalf of his deceased wife, alleging numerous claims against Duke Health and BCBSNC, including that Duke Health and BCBSNC discriminated in the medical treatment of Plaintiff's wife because of her race. Defendants Duke Health and BCBSNC previously filed motions to dismiss, and the court has granted the motions in part, leaving only the remaining claims: a claim against BCBSNC for race discrimination under 42 U.S.C. § 1981 and claims against Duke Health for race discrimination under 42 U.S.C. § 1981 and for intentional infliction of emotional distress.¹ Plaintiff has now filed a motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure and that motion has been referred to the undersigned.² Furthermore,

¹ The court also dismissed without prejudice Plaintiff's claims against Defendant Alliance One Receivables Management, Inc.

² Local Rule 7.3(a) requires that a motion be accompanied by a brief. Furthermore, Local Rule 7.3(g) provides that a party must obtain permission from the court to file a late brief. Finally, under Local Rule 7.3(k), a motion unaccompanied by a brief may be summarily denied. Here, Plaintiff served and filed his brief more than two weeks after serving and filing his motion, and Plaintiff did not seek permission from the court before filing his late brief. Thus, the motion for judgment on the pleadings may be summarily denied for Plaintiff's failure to comply with the court's local rules. Nevertheless, the court will consider the motion on its merits.

Plaintiff requests a hearing on the motion for judgment on the pleadings.

Discussion

The federal rules provide, in pertinent part, that “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” FED. R. CIV. P. 12(c). In considering a motion for judgment on the pleadings under Rule 12(c), facts presented in the pleadings and the inferences drawn therefrom must be viewed in the light most favorable to the non-moving party. *Edwards v. City of Goldsboro*, 178 F.3d 231, 248 (4th Cir. 1999). Judgment on the pleadings is proper under Rule 12(c) only if the movant establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law. *Davenport v. Davenport*, 146 F. Supp. 2d 770, 783 (M.D.N.C. 2001). First, as to Plaintiff’s request for a hearing on the motion for judgment on the pleadings, because Plaintiff’s motion has been fully briefed by the parties, and because Plaintiff has not articulated any special considerations sufficient to warrant an oral hearing on Plaintiff’s motion, the motion for a hearing will be denied. See Local Rule 7.3(c)(1) (stating that motions shall be considered and decided by the court on motions papers and briefs without hearing or oral argument unless otherwise ordered by the court). Furthermore, after considering the parties’ briefs, the court finds that Plaintiff’s motion for judgment on the pleadings should be denied. As the movant, Plaintiff simply fails to show that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law.

Plaintiff's brief in support of his motion for judgment on the pleadings merely repeats many of the factual allegations from his amended complaint without giving any reasons why judgment on the pleadings is appropriate. Furthermore, Defendants Duke Health and BCBSNC dispute almost all of Plaintiff's factual allegations in support of the remaining claims against them. Because material issues of fact are clearly disputed, judgment on the pleadings is simply not appropriate. In sum, Plaintiff's motion for judgment on the pleadings should be denied.

Conclusion

IT IS THEREFORE RECOMMENDED that Plaintiff's motion for judgment on the pleadings (docket no. 88) be **DENIED**. Furthermore, Plaintiff's request for an oral hearing on the motion (docket no. 91) is **DENIED**.


WALLACE W. DIXON
United States Magistrate Judge

Durham, NC
June 14, 2005